

by the Rules Counsel to determine whether the complaint:

(i) Establishes probable cause to believe that a violation of this part or of the Judicial Code has occurred; or

(ii) Alleges ineffective assistance of counsel, or other violations of subpart B of this part, as a matter of defense in a court-martial, administrative separation, or nonjudicial punishment proceeding. If so, the Rules Counsel shall forward a copy of the complaint to the proper appellate authority for appropriate action and comment.

(e) The Rules Counsel shall close the file without further action if the complaint does not establish probable cause to believe that a violation has occurred. The Rules Counsel shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file.

(f) The Rules Counsel may close the file if there is a determination that the complaint establishes probable cause but the violation is of a minor or technical nature appropriately addressed through corrective counseling. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure the covered attorney concerned receives appropriate counseling and shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting of such action.

§ 776.81 Charges.

(a) If the Rules Counsel determines that there is probable cause to believe that a violation of this part or of the Code of Judicial Conduct has occurred, the Rules Counsel shall draft charges alleging violations of this part or of the Code of Judicial Conduct and forward the charges, together with the original complaint and any allied papers, as follows:

(1) In cases involving Marine Corps attorneys not serving as defense coun-

sel or attached to Navy units, to the officer exercising general court-martial jurisdiction (OEGCMJ) over the charged covered attorney, and request, on behalf of JAG, that the OEGCMJ appoint a covered attorney (normally the concerned attorney's supervisor) to conduct a preliminary inquiry into the matter;

(2) In all other cases, to the supervisory attorney in the charged attorney's chain of command (or such other officer as JAG may designate), and direct, on behalf of JAG, the supervisory attorney to conduct a preliminary inquiry into the matter.

(b) The Rules Counsel shall provide a copy of the charges, complaint, and any allied papers to the covered attorney against whom the complaint is made and notify him or her that a preliminary inquiry will be conducted. Service of complaints, charges, and other materials shall be made by personal service, or by registered or certified mail sent to the covered attorney's last known address reflected in official Navy or Marine Corps records or in the records of the state bar(s) which licensed the attorney to practice law.

(c) The Rules Counsel shall also provide a copy of the charges to the commanding officer, or equivalent, of the covered USG attorney concerned if the complaint involves a covered USG attorney on active duty or in civilian Federal service.

(d) The Rules Counsel shall also forward a copy of the charges as follows:

(1) In cases involving Navy or Marine Corps judge advocates serving in Naval Legal Service Command (NLSC) units, to Vice Commander, NLSC;

(2) In cases involving Navy attorneys serving in Marine Corps units, or involving Marine Corps attorneys serving in Navy units, to the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving members of the Navy-Marine Corps Trial Judiciary, to the Trial Judiciary Chief Judge; and

(4) To the appropriate military service attorney discipline section if the complaint involves covered attorneys certified by the Judge Advocates General/Chief Counsel of the other uniformed services.